



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2021-0947; FRL-9640-01-R4]

## Air Plan Approval; Mississippi; Infrastructure Requirements for the 2015 8-hour Ozone National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve in part, and conditionally approve in part, a State Implementation Plan (SIP) submission provided by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), through a letter dated January 25, 2021. This proposal pertains to certain infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standards (NAAQS or standards). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of that NAAQS. The January 25, 2021, SIP submission addresses all infrastructure elements except for those pertaining to the contribution to nonattainment or interference with maintenance in other states. EPA is proposing to approve the January 25, 2021, SIP revision with the exception of the prevention of significant deterioration (PSD) infrastructure elements, the air quality modeling element, and the visibility protection element. EPA is proposing to conditionally approve the portions of the submittal related to the prevention of significant deterioration (PSD) infrastructure elements and the air quality modeling element. EPA will act on the visibility protection element in a separate rulemaking.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2021-0947 at [www.regulations.gov](http://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [www2.epa.gov/dockets/commenting-epa-dockets](http://www2.epa.gov/dockets/commenting-epa-dockets).

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## **SUPPLEMENTARY INFORMATION:**

### **Table of Contents**

- I. Background and Overview
- II. What Elements are Required under Sections 110(a)(1) and 110(a)(2)?
- III. What is EPA's Approach to the Review of Infrastructure SIP Submissions?

- IV. What is EPA’s Analysis of How Mississippi Addressed the Elements of the Section 110(a)(1) and (2) “Infrastructure” Provisions?
- V. Proposed Action
- VI. Statutory and Executive Order Reviews

## **I. Background and Overview**

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an “infrastructure SIP” or “iSIP.” States were required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.<sup>1</sup>

With the exception of the visibility protection provisions of section 110(a)(2)(D)(i)(II), the prevention of significant deterioration (PSD) provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the air quality modeling element of 110(a)(2)(K), EPA is proposing to approve Mississippi’s January 25, 2021, SIP revision provided to EPA through the MDEQ for the applicable requirements of the 2015 8-hour ozone NAAQS.<sup>2</sup> EPA will consider the portion of Mississippi’s January 25, 2021, SIP revision that

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<sup>1</sup> In infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

<sup>2</sup> On September 6, 2019, Mississippi provided a SIP submission addressing the interstate transport provisions of section 110(a)(2)(D)(i)(I) pertaining to contribution to nonattainment or interference with maintenance in other states. EPA will address the interstate transport provisions of section 110(a)(2)(D)(i)(I) through a separate rulemaking.

addresses the visibility protection provisions of section 110(a)(2)(D)(i)(II) in a separate rulemaking.

As part of the January 25, 2021, SIP submission, Mississippi requested conditional approval of the PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the air quality modeling elements under 110(a)(2)(K).<sup>3</sup> Related to its request for conditional approval, Mississippi provided a written commitment under section 110(k)(4) of the CAA to take action to meet the requirements of the PSD and air quality modeling elements for its 2015 ozone iSIP by adopting a rule revision no later than one year after EPA's conditional approval of these portions of Mississippi's ozone iSIP. Specifically, MDEQ intends to amend 11 Mississippi Administrative Code (MAC), Part 2, Chapter 2, as well as 11 MAC, Part 2, Chapter 5, to cite to the current version of 40 CFR Part 51, Appendix W, *Guideline on Air Quality Models*, and submit a revision containing the revised regulations to EPA within one year of EPA conditional approval to meet its conditional approval commitment to EPA. For this reason, in this notice of proposed rulemaking EPA is proposing to conditionally approve the portions of Mississippi's 2015 8-hour ozone NAAQS iSIP for Sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(J), and 110(a)(2)(K) of the CAA, related to the PSD program and air quality modeling. With the exceptions noted, EPA is proposing to fully approve the other infrastructure elements for the 2015 Ozone iSIP addressed in the January 25, 2021, submission.

## **II. What Elements are Required Under Sections 110(a)(1) and 110(a)(2)?**

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA

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<sup>3</sup> Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval will be treated as a disapproval and EPA will issue a finding of disapproval.

for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements of section 110(a)(2) are listed below and are described in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," (2013 Guidance).<sup>4</sup>

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport (broken down into four separate Prongs)
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies

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<sup>4</sup> Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) for infrastructure SIPs because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These elements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the major source nonattainment permitting requirements of 110(a)(2)(C).

- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting Fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

### **III. What is EPA's Approach to the Review of Infrastructure SIP Submissions?**

As discussed above, whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to submit infrastructure SIPs that meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.<sup>5</sup>

Unless otherwise noted below, EPA is following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's implementation plan for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.<sup>6</sup> EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent

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<sup>5</sup> EPA explains and elaborates on these ambiguities and its approach to address them in its 2013 Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions including EPA's prior actions on Mississippi infrastructure SIPs such as the action to address the 2012 PM<sub>2.5</sub> NAAQS. *See* 81 FR 36848 (June 8, 2016).

<sup>6</sup> *See* *Mont. Env'tl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

orders, etc. that comprise its SIP.

#### **IV. What is EPA’s Analysis of How Mississippi Addressed the Elements of Section 110(a)(1) and (2)?**

##### ***1. 110(a)(2)(A) Emission Limits and Other Control Measures***

Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements.

Several regulations within Mississippi’s SIP are relevant to emission limits and other air quality control measures. These include SIP-approved regulations 11 MAC, Part 2, Chapter 1, Chapter 3, and Chapter 5. Collectively, these regulations establish enforceable emissions limitations and other control measures, means, or techniques for activities that contribute to ozone concentrations in the ambient air. Additionally, Mississippi Code Title 49, section 49-17-17(h)<sup>7</sup> provides MDEQ the authority to adopt, modify, or repeal and promulgate ambient air quality standards and emission standards for the state under such conditions as the Mississippi Commission on Environmental Quality (Commission) may prescribe for the prevention, control, and abatement of pollution.

EPA has made the preliminary determination that the provisions contained in Mississippi’s state statutes and SIP-approved state regulations are adequate for enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance to satisfy the requirements of section 110(a)(2)(A) for the 2015 8-hour ozone NAAQS.

##### ***2. 110(a)(2)(B) Ambient Air Quality Monitoring/Data System***

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<sup>7</sup> Mississippi Code Title 49 is referenced in the State's infrastructure SIP submissions as “Appendix A-9.” Unless otherwise indicated herein, portions of the Mississippi Code referenced in this proposal are not incorporated into the SIP.

Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to: (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. To meet the requirements of element B, Mississippi's January 25, 2021, submission cites to State Code Title 49, specifically section 49-17-17(g), which gives MDEQ authority to collect and disseminate information relating to air quality and pollution and the prevention, control, supervision, and abatement thereof. Additionally, annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58.<sup>8</sup> The annual network plan involves an evaluation of any proposed changes to the monitoring network and includes the annual ambient monitoring network design plan and a certified evaluation of the state's ambient monitors and auxiliary support equipment. On June 28, 2021, Mississippi submitted its monitoring network plan to EPA. On August 26, 2021, EPA approved the monitoring network plan for Mississippi. EPA's approval of Mississippi's monitoring network plan is available in the docket for this proposed action.

EPA has made the preliminary determination that Mississippi's SIP submission is adequate for the ambient air quality monitoring and data system requirements related to the 2015 8-hour ozone NAAQS.

**3. *Section 110(a)(2)(C) Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources***

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<sup>8</sup> On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.



This element consists of three sub-elements: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for a NAAQS as required by CAA title I part C (*i.e.*, the major source PSD program). Mississippi's 2015 8-hour ozone NAAQS infrastructure SIP submission cites to a number of SIP-approved provisions to address these requirements. EPA's rationale for its proposed action regarding each sub-element is described below.

*Enforcement:* Mississippi regulation 11 MAC Part 2, Chapter 2, *Permit Regulation for the Construction and/or Operation of Air Emissions Equipment*, Rule 2.6 provides for the enforcement of ozone precursors emissions limitations and control measures through construction permitting for new or modified stationary sources. Furthermore, under Mississippi Code Title 49, Chapter 17, MDEQ has enforcement authority to seek penalties and injunctive relief for violations of emission limits and other control measures and violations of permits.

*Regulation of Minor Sources and Modifications:* Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions that contribute to ozone concentrations related to the 2015 8-hour ozone NAAQS. MDEQ cites to 11 MAC, Part 2, Chapter 2, Rule 2.5. for its minor source construction permitting. EPA notes that other SIP-approved provisions in 11 MAC Part 2, Chapter 2 apply to minor source construction permitting such as Rule 2.1.D, which requires any new or modified stationary source to have a permit to construct prior to construction. EPA has made the preliminary determination that Mississippi's SIP is adequate for program enforcement of control measures, and regulation of minor sources and modifications related to the 2015 8-hour ozone NAAQS.

*Preconstruction PSD Permitting for Major Sources:* For the major source PSD program sub-

element of section 110(a)(2)(C), EPA interprets the CAA to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has an up-to-date PSD permitting program in place covering the PSD requirements for all regulated NSR pollutants.<sup>9</sup> A state's PSD permitting program is complete for this sub-element (as well as prong 3 of D(i)(II), and J related to PSD) if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all PSD requirements that are due under EPA regulations or the CAA on or before the date of EPA's action on the infrastructure SIP submission.

Mississippi's 2015 8-hour ozone NAAQS infrastructure SIP submission cites to a number of SIP-approved provisions to address the major source PSD program sub-element of section 110(a)(2)(C) as described below.

Mississippi's January 25, 2021, iSIP submission cites to two separate SIP-approved regulations. Specifically, Mississippi cites to 11 MAC, Part 2, Chapter 5 and portions of Chapter 2. These SIP-approved regulations provide that new major sources and major modifications in areas of the State designated attainment or unclassifiable for any given NAAQS are subject to a federally-approved PSD permitting program under part C of title I of the CAA. However, the most current version of Mississippi's SIP-approved PSD regulations cited above do not reference the most updated version of EPA's *Guideline on Air Quality Models*, codified at 40 CFR part 51, Appendix W.<sup>10</sup>

EPA's PSD regulations at 40 CFR 51.166(l) require that modeling be conducted in accordance with Appendix W. As detailed in EPA's 2013 Guidance, approval of element C requires a fully approved and up-to-date PSD permitting program, which requires application of Appendix W consistent with EPA's PSD implementing regulations, (approval of PSD elements D(i)(II), and J is also contingent on an up-to-date PSD program). As noted, Mississippi's PSD program does not meet these updated modeling requirements and, for this reason, the State has

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<sup>9</sup> See EPA's 2013 Guidance.

<sup>10</sup> EPA approved the most recent version of Appendix W on January 17, 2017, at 82 FR 5182.

committed to update its PSD regulations to reference the most current version of Appendix W and submit a SIP revision containing the revised regulations within one year of EPA's conditional approval. In this notice of proposed rulemaking, EPA is proposing to conditionally approve Mississippi's January 25, 2021, submission related to the PSD element of 110(a)(2)(C).

**4. *110(a)(2)(D)(i)(I) and (II) Interstate Pollution Transport***

Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1") and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4").

*110(a)(2)(D)(i)(I)—prongs 1, 2, and 4:* EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) or the visibility protection provisions (prong 4). EPA will consider these requirements in relation to Mississippi's 2015 8-hour ozone NAAQS infrastructure in a separate rulemaking.

*110(a)(2)(D)(i)(II)—prong 3:* Section 110(a)(2)(D)(i)(II) requires that the SIP contain adequate provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state. With regards to prong 3 of

section 110(a)(2)(D)(i)(II), a state may meet this requirement by a confirmation in its infrastructure SIP submission that new major sources and major modifications in the state are subject to a PSD program meeting current structural requirements of part C, or (if the state contains a nonattainment area that has the potential to impact PSD in another state) a nonattainment NSR program.

To meet prong 3, Mississippi's January 25, 2021, iSIP submission cites to SIP-approved regulation 11 MAC, Part 2, Chapter 5. This regulation provides that new major sources and major modifications in areas of the State designated attainment or unclassifiable for any given NAAQS are subject to a federally-approved PSD permitting program under part C of title I of the CAA.

However, as described in section IV.3. concerning 110(a)(2)(C) above, the most current version of Mississippi's SIP-approved PSD regulations do not reference the most updated version of EPA's *Guideline on Air Quality Models*, codified at 40 CFR part 51, Appendix W. For this reason, Mississippi's January 25, 2021, iSIP submission includes a request for conditional approval of prong 3 and a commitment to update its PSD regulations to reference the most current version of Appendix W and submit a SIP revision containing the revised regulations to EPA, within one year of EPA conditional approval.

EPA has made the preliminary determination that Mississippi's SIP and practices are adequate to meet the prong 3 requirements related to the 2015 8-hour ozone NAAQS, with the exception of the citation to an outdated version of Appendix W. Accordingly, EPA is proposing to conditionally approve Mississippi's infrastructure SIP submission with respect to the PSD provisions for section 110(a)(2)(D)(II)[prong 3].

#### **5. *110(a)(2)(D)(ii) Interstate Pollution Abatement and International Air Pollution***

Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126(b) of the Act, relating to interstate and international pollution abatement. Mississippi's January 25, 2021, iSIP submission cites to SIP-approved 11 MAC, Part 2, Chapter

5. This regulation provides where 40 CFR 51.166 was adopted by reference into the SIP and requires notification of potential impacts from new or modified sources to state and local agencies of neighboring states. Additionally, Mississippi has no pending obligations under sections 115 or 126 of the CAA. EPA has made the preliminary determination that Mississippi's and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2015 8-hour ozone NAAQS.

**6. *110(a)(2)(E) Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies***

Section 110(a)(2)(E) requires that each implementation plan provide: (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA's rationale respecting each sub-element for which EPA is proposing action in this rulemaking is described below.

In support of sub-element 110(a)(2)(E)(i), Mississippi's SIP submission demonstrates that it has adequate authority to carry out its SIP. Specifically related to sub-element 110(a)(2)(E)(i), Mississippi's infrastructure SIP submission cites to Mississippi Code Title 49 section 49-17-17(d), which gives MDEQ authority to accept and administer loans and grants from the federal government, and from other sources, public and private, for carrying out any of its functions. Additionally, MDEQ cites to Mississippi Code Title 49 section 49-17-17(h), which gives authority under State law to carry out its SIP and related issues. For section 110(a)(2)(E)(iii), Mississippi's January 25, 2021, submission establishes that the State does not rely on any local or regional government, agency, or instrumentality for the implementation of any plan provision, and so the State has sole responsibility for ensuring adequate implementation

of such plan provisions, as established in Mississippi Code Title 49 section 49-17-17(h).

As further evidence of the adequacy of MDEQ's resources, EPA submitted a letter to Mississippi on November 4, 2021, outlining CAA section 105 grant commitments and the current status of these commitments for fiscal year 2022. The letter EPA submitted to Mississippi can be accessed at [www.regulations.gov](http://www.regulations.gov) using Docket ID No. EPA-R04-OAR-2021-0947. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Mississippi satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2022. Collectively, these rules and commitments provide evidence that MDEQ has adequate personnel, funding, and legal authority to carry out the State's implementation plan and related issues. EPA has made the preliminary determination that Mississippi has adequate resources and authority to satisfy sections 110(a)(2)(E)(i) and (iii) of the 2015 8-hour ozone NAAQS.

Section 110(a)(2)(E)(ii) requires that the State comply with section 128 of the CAA. Section 128 requires that the SIP contain requirements providing that: (a)(1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (a)(2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed.

On April 8, 2013, EPA incorporated Article 4, Section 109 of the Mississippi Constitution and portions of Mississippi Code sections 25-4-25,-27,-29,-101,-103, and -105 into the Mississippi SIP to meet the CAA section 128(a)(1) public interest requirements for state boards and the conflict of interest disclosure requirement of section 128(a)(2). *See* 78 FR 20793. On October 4, 2018, (83 FR 50014), EPA approved additional revisions to the Mississippi SIP to incorporate provisions to address remaining CAA section 128 requirements and strengthen the SIP's conflict of interest requirements.

First, Mississippi Code section 49- 2-5 was incorporated into the SIP to address conflicts of interest for the Mississippi Commission on Environmental Quality, which has CAA enforcement order approval authority. This provision addresses the requirement in CAA section 128(a)(1) by prohibiting a majority of the members of the Commission from deriving any significant portion of their income from persons subject to permits under the Federal Clean Air Act or enforcement order under the Federal Clean Air Act. In addition, this provision also addresses any potential conflict of interest by a member of the Commission by requiring such member to disclose potential conflicts and recuse himself or herself from participating in or voting on any matter related to such conflict of interest.

Next, EPA approved SIP revisions to address section 128 requirements for the MDEQ Permit Board. Specifically, EPA approved “Air Emissions Regulations for the Prevention, Abatement, and Control of Air Contaminants” Title 11, Part 2, Chapter 1, Rule 1.1. Chapter 1, Rule 1.1, which ensures that at least a majority of the members of the Permit Board shall represent the public interest and shall not derive any significant portion of their income from persons subject to permits or enforcement orders under the Clean Air Act.

Additionally, EPA approved revisions to the MDEQ Permit Board procedural rules, "Regulations Regarding Administrative Procedures Pursuant to the Mississippi Administrative Procedures Act", Title 11, Part 1 Chapter 5, Rule 5.1. This rule describes the composition of the MDEQ Permit Board and provides that a majority of board members represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA. It also provides for annual certification as to whether each member derives a significant portion of income from persons subject to permits or enforcement orders under the CAA and a process for replacing members as needed to ensure that a majority does derive a significant portion of income from regulated entities.

EPA has made the preliminary determination that Mississippi’s SIP has adequately addressed the requirements of section 128(a), and accordingly have met the requirements of

section 110(a)(2)(E)(ii). EPA is proposing to approve Mississippi's infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii), and (iii).

**7. *110(a)(2)(F) Stationary Source Monitoring and Reporting***

Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. EPA's rules regarding how SIPs need to address source monitoring requirements at 40 CFR 51.212 require SIPs to exclude any provision that would prevent the use of credible evidence of noncompliance.

Additionally, states are required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI), pursuant to Subpart A to 40 CFR part 51—"Air Emissions Reporting Requirements." The NEI is EPA's central repository for air emissions data. All states are required to submit a comprehensive emission inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for criteria pollutants and the precursors that form them including nitrogen oxides and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Mississippi most recently published triennial compiled emissions information as part of the 2017 NEI. EPA compiles the emissions data, supplementing it where necessary, and releases it to the public through the website: <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data>.

MDEQ's January 25, 2021, infrastructure SIP submission identifies that Mississippi Code Title 49 section 49-17-21, states that the Mississippi Commission on Environmental Quality may require the installation, maintenance, and use of such monitoring equipment and methods at such



locations and intervals as the Commission deems necessary. In addition, MDEQ cites to SIP-approved rule 11 MAC, Part 2, Chapter 2, Rule 2.6, which lists the requirements for compliance testing and reporting that must be included in any MDEQ air pollution permit.

Further, MDEQ cites to Mississippi Code Title 49 section 49-17-21, which states that MDEQ has the authority to require the maintenance of records related to the operation of air contaminant sources and that any authorized representative of the Commission may examine and copy any such records or memoranda pertaining to the operation of such contaminant source. Finally, Mississippi cited to SIP-approved 11 MAC, Part 2, Chapter 2, Rule 2.9, which requires that copies of records relating to the operation of air contamination sources be submitted to the Permit Board, as required by the permit, or upon request.

Also note that Section 11 MAC, Part 2, Chapter 1, *Air Emission Regulations For The Prevention, Abatement, and Control of Air Contaminants*, authorizes the use of any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of establishing whether or not a source has violated or is in violation of any standard or applicable requirement. EPA is unaware of any provision preventing the use of credible evidence in the Mississippi SIP.

EPA has made the preliminary determination that Mississippi's SIP submission and practices adequately provide for the stationary source monitoring systems related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submission with respect to section 110(a)(2)(F).

#### **8. 110(a)(2)(G): Emergency Powers**

Section 110(a)(2)(G) of the Act requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Mississippi's January 25, 2021, submission cites to Mississippi Code Title 49 section 49-17-27, stating that in the event an emergency is found to exist by the Commission, it may issue an

emergency order as the circumstances may require. Additionally, Mississippi cites to SIP-approved regulation 11 MAC, Part 2, Chapter 3, which states that the MDEQ Director may determine that an Air Pollution Emergency Episode condition exists at one or more monitoring sites solely because of emissions from a limited number of sources, and that he may order such source or sources to put into effect the emission control programs which are applicable for each episode stage. Further, 11 MAC, Part 2, Chapter 3 lists regulations that prevent the excessive buildup of air pollutants during air pollution episodes.

EPA has made the preliminary determination that Mississippi's SIP submission adequately addresses emergency powers related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submission with respect to section 110(a)(2)(G).

#### **9. *110(a)(2)(H) SIP Revisions***

Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) As may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements.

To comply with the requirements of section 110(a)(2)(H)(i), Mississippi's January 25, 2021, infrastructure SIP submission cites to Mississippi Code Title 49 section 49-17-17(h), which provides MDEQ with the necessary statutory authority to revise the SIP to accommodate changes to the NAAQS. Mississippi Code Title 49 section 49-17-17(h) also provides MDEQ with the necessary statutory authority to revise the SIP if the Administrator finds the plan to be substantially inadequate to attain the NAAQS to comply with the requirements of section 110(a)(2)(H)(ii).

EPA has made the preliminary determination that Mississippi's SIP submission adequately demonstrates a commitment and authority to provide future SIP revisions related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submission with respect to section 110(a)(2)(H).

***10. 110(a)(2)(J) Consultation with Government Officials, Public Notification, and PSD and Visibility Protection***

Section 110(a)(2)(J) has four components related to: (1) consultation with government officials, (2) public notification, (3) PSD, and (4) visibility protection.

*Consultation with Government Officials:* With regard to consultation, section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations, and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to the consultation provisions section 121. To meet the consultation requirements of element J, Mississippi's iSIP submission cites to SIP-approved regulation 11 MAC, Part 2, Chapter 5, which provides for continued consultation with government officials. Additionally, SIP submission Appendix A-9, Mississippi Code Title 49 section 49-17-17(c), provides MDEQ with the necessary statutory authority to advise, consult, cooperate, or enter into contracts, grants, and cooperative agreements with any federal or state agency or subdivision.

EPA has made the preliminary determination that Mississippi's SIP submission adequately demonstrates that the State meets applicable requirements related to consultation with government officials for the 2015 8-hour ozone NAAQS. Thus, EPA is proposing to approve Mississippi's infrastructure SIPs for the 2015 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(J) for this provision.

*Public Notification:* With respect to public notification, section 110(a)(2)(J) of the CAA requires states to notify the public of NAAQS exceedances and associated health hazards, and to enhance public awareness of measures that can prevent such exceedances in accordance with the public

notice requirements of CAA section 127. To meet these requirements of element J, Mississippi's iSIP submission cites to SIP-approved regulation 11 MAC, Part 2, Chapter 3, which requires MDEQ to notify the public of any air pollution alert, warning, or emergency. To notify the public regarding ozone, MDEQ has a public notice mechanism in place. One of the mechanisms is the MDEQ web site where changes in regulations, air quality summary data, and daily Air Quality Index reports can be found. Additionally, certain regulatory actions may also be published in newspapers and/or addressed at public hearings.

EPA has made the preliminary determination that Mississippi's SIP submission adequately demonstrates that the State meets applicable requirements related to the ability to provide public notification of section 110(a)(2)(J) for the 2015 8-hour ozone NAAQS. Thus, EPA is proposing to approve Mississippi's infrastructure SIPs for the 2015 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(J) for this provision.

*PSD:* With regard to the PSD element of section 110(a)(2)(J), this requirement is met (similarly to 110(a)(2)(C)) by a state's confirmation, in an infrastructure SIP submission, that the state has a SIP-approved PSD program meeting all the current requirements of part C of title I of the CAA for all NSR regulated pollutants. To meet the requirements of element J, Mississippi's January 25, 2021, iSIP submission cites to SIP-approved regulation 11 MAC, Part 2, Chapter 5, which provides that new major sources and major modifications in areas of the State designated attainment or unclassifiable for any given NAAQS are subject to a federally-approved PSD permitting program under part C of title I of the CAA.

However, as described in section IV.3. concerning 110(a)(2)(C) above, the most current version of Mississippi's SIP-approved PSD regulations do not reference the most updated version of EPA's *Guideline on Air Quality Models*, codified at 40 CFR part 51, Appendix W. For this reason, Mississippi's January 25, 2021, iSIP submission includes a request for conditional approval of element J and a commitment to update its PSD regulations to reference

the most current version of Appendix W, and submit a SIP revision containing the revised regulations to EPA, within one year of EPA conditional approval.

*Visibility Protection:* With regard to the visibility protection element of section 110(a)(2)(J), EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that Mississippi is subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. As such, Mississippi's infrastructure SIP submission related to the 2015 8-hour ozone NAAQS does not address the visibility protection element of section 110(a)(2)(J).

#### ***11. 110(a)(2)(K) Air Quality Modeling and Submission of Modeling Data***

Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to EPA can be made. 110(a)(2)(K) has two components related to: (1) the performance of air quality modeling, and (2) the submission of data related to such air quality modeling to the Administrator.

Mississippi's January 25, 2021, iSIP submission cites to two separate SIP-approved regulations to meet the modeling requirement of element K. Specifically, Mississippi cites to 11 MAC, Part 2, Chapter 2 and 11 MAC, Part 2, Chapter 5. These SIP-approved regulations include requirements for air quality modeling and reporting for the PSD permitting program. However, as described in section IV.3 concerning 110(a)(2)(C) above, the most current version of Mississippi's SIP-approved PSD regulations cited above do not reference the most updated version of EPA's *Guideline on Air Quality Models*, codified at 40 CFR part 51, Appendix W. For this reason, Mississippi's January 25, 2021, iSIP submission includes a request for conditional approval of element K and a commitment to update its PSD regulations to reference

the most current version of Appendix W, and submit a SIP revision containing the revised regulations to EPA, within one year of EPA conditional approval.

Because of the outdated reference to Appendix W modeling, EPA is proposing to conditionally approve Mississippi's infrastructure SIP submission with respect to section 110(a)(2)(K).

## ***12. 110(a)(2)(L) Permitting Fees***

Section 110(a)(2)(L) requires that the owner or operator of each major stationary source pay the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Mississippi January 25, 2021, infrastructure SIP submission cites to Mississippi Code Title 49 section 49-17-30, which provides for the assessment of Title V permit fees to cover these costs. The State notes that these title V operating program fees cover the reasonable cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Mississippi adequately provides for permitting fees related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submission with respect to section 110(a)(2)(L).

## ***13. 110(a)(2)(M) Consultation/Participation by Affected Local Entities***

Section 110(a)(2)(M) of the Act requires states to provide for the consultation with, and the participation of, local political subdivisions affected by the SIP, during the SIP development process. To meet this requirement, MDEQ cites to Mississippi Code Title 49 section 49-17-

17(c), which gives the Commission the statutory authority to advise and consult with any political subdivisions in the State. Additionally, Mississippi Code Title 49 section 49-17-19(b), requires that the Commission conduct public hearings in accordance with EPA regulations prior to establishing, amending, or repealing standards of air quality. Furthermore, MDEQ has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the development of its Transportation Conformity SIP and has worked with the Federal Land Managers as a requirement of the regional haze rule. EPA has made the preliminary determination that Mississippi's SIP submission and practices adequately demonstrate consultation with affected local entities related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Mississippi's infrastructure SIP submission with respect to section 110(a)(2)(M).

## **V. Proposed Action**

With the exception of the visibility provisions of section 110(a)(2)(D)(i)(II) and PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3), and 110(a)(2)(J), and the modeling provision of 110(a)(2)(K), EPA is proposing to approve Mississippi's January 25, 2021, SIP submission for the 2015 8-hour ozone NAAQS for the above described infrastructure SIP requirements. Further, EPA is proposing to conditionally approve the portions of the 2015 8-hour Ozone NAAQS iSIP that address the PSD related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J), and the modeling requirements of 110(a)(2)(K). Mississippi submitted a separate submittal to address CAA section 110(a)(2)(D)(i)(I)[prongs 1 and 2], and EPA is addressing that revision in a separate rulemaking.

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).



The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

## **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: July 11, 2022.

**Daniel Blackman,**  
*Regional Administrator,*  
*Region 4.*